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TO RUEHC/SECSTATE WASHDC IMMEDIATE 3549
INFO RUEHOO/CHINA POSTS COLLECTIVE
RUEHUNV/USMISSION UNVIE VIENNA 1148
RUCPDO/DEPT OF COMMERCE WASHDC
RUEHGV/USMISSION GENEVA 1534
RHEFHLC/DEPT OF HOMELAND SECURITY WASHINGTON DC
RHEHNSC/NSC WASHDC
RUEKJCS/SECDEF WASHINGTON DC
RHMFISS/CDR USPACOM HONOLULU HI
RHMFISS/DEPT OF ENERGY WASHINGTON DC

C O N F I D E N T I A L SECTION 01 OF 06 BEIJING 000120

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DEPT FOR T, ISN, EAP AND EAP/CM
USDOC FOR BIS

E.O. 12958: DECL: 01/05/2027

TAGS: [PREL](#) [PARM](#) [MNUC](#) [ETTC](#) [BEXP](#) [ETRD](#) [CH](#)

SUBJECT: CHINA'S EXPORTCONTROLS - THE SYSTEM AND ITS
PITFALLS

REF: A. BEIJING 24493
[1](#)B. BEIJING 19362
[1](#)C. BEIJING 18589
[1](#)D. BEIJING 17719
[1](#)E. BEIJING 15561
[1](#)F. BEIJING 12788

Classified By: CDA David S. Sedney. Reasons 1.4 (b) and (d)

Summary

[1](#)1. (C) Although China's export controls are a work in progress that continue to undergo periodic revision since first promulgated in the 1990s, enforcement is opaque and considered the weakest link in the export control system. Despite official pronouncements that the PRC has prosecuted "scores of cases" under its export control laws, Beijing does not share detailed information on its investigations and has only publicly fined two Chinese companies. Experts point to close, personal connections between company officials and senior Chinese leaders and a culture of secrecy that pervades Chinese ministries as reasons for China's unwillingness to investigate and prosecute firms.

[1](#)2. (C) Chinese agencies divide export control responsibilities based on the type of item to be exported, though Chinese officials claim that the review of export licenses is subject to interagency coordination. The Ministry of Commerce reviews dual-use exports, while the Commission of Science, Technology and Industry for National Defense reviews exports of nuclear material and equipment as well as munitions and missile exports. The National Development and Reform Commission reviews Chemical Weapons Convention-listed chemical exports. Under China's &catch-all provisions, exporters must apply for a license if the exporter knows there is a risk of proliferation. In an attempt to review the authenticity of the end-user, China requires an exporter to produce an end-use certificate before issuing a license. However, the PRC generally only requires the importer to issue its own end-use certificate. The PRC conducts export control training programs and seminars for industry, but its efforts may not be leading to changed behavior at Chinese firms. End Summary

China's Export Controls - Agency Responsibilities

13. (C) China's export control laws and regulations, which China began promulgating in the 1990s, divide licensing review responsibilities among several government agencies. Which agency is responsible for approving or denying an export license depends on the type of item or technology to be exported. For example, the Commission of Science, Technology and Industry for National Defense (COSTIND) is responsible for examining exports of nuclear material and equipment and non-nuclear goods used in reactors, while the Ministry of Commerce (MOFCOM) takes the lead in reviewing nuclear dual-use items. COSTIND reviews munitions and missile exports, including military-use missile technology, while MOFCOM reviews civilian, dual-use missile technology exports. The National Development and Reform Commission (NDRC) is responsible for reviewing Chemical Weapons Convention-listed chemical exports, while MOFCOM is responsible for reviewing non-CWC chemicals. MOFCOM works with the Ministry of Agriculture to review applications dealing with animal and plant biological agents and technologies and with the Ministry of Health to review applications dealing with human biological agents and technologies.

14. (C) Chinese officials state that the review of export licenses is an inter-agency process. If there are irresolvable disagreements among reviewing agencies or if the specific transaction is determined to be sufficiently sensitive, in theory the State Council would review the application for final consideration. While special groups within the State Council reportedly exist for this purpose, there is little evidence to indicate that these groups meet regularly. The Central Military Commission also plays a role

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in approving major arms sales. China has established an independent panel of 200 experts to review the technical elements of applications under the direction of MOFCOM's Mechanic, Electronic and Hi-Tech Department Export Control Division II. (Note: Division I is responsible for assessing foreign export controls on Chinese exports and implements the United States-China 2004 Exchange of Letters on End-Use Visit Understanding, which permits the Embassy's Export Control Attache to conduct end-use checks, including Pre-License Checks and Post Shipment Verifications. End Note.)

MOFCOM's Role in Export Controls

15. (C) MOFCOM is the primary licensing agency for dual-use exports, although it often turns to other agencies for advice on individual licenses. MOFCOM Export Control Division II Director Wang Long told us that provincial-level MOFCOM offices attempt to check the background of exporters and the "veracity" of information contained in license applications before forwarding the application to MOFCOM Headquarters for adjudication. MOFCOM considers several factors when reviewing license applications, including whether the export is to a "sensitive" country, involves a "sensitive item or technology" or will contravene an international treaty or convention. Wang claimed that MOFCOM maintains a "watch list" of domestic and international firms of concern. MOFCOM denies approximately two percent of all license applications annually, but MOFCOM officials refuse to share how many applications the Ministry reviews annually, saying only that the number exceeds 1,000. In July, MOFCOM updated its biological dual-use list (Ref E) and imposed controls on exports of graphite.

16. (C) According to MOFCOM officials, China attempts to review the authenticity and reliability of the importer and the end-user by requiring an exporter to produce a certificate of end-use. The end-use certificate can be completed by the recipient company and authenticated by the host government or the PRC Embassy in the end-use country. However, in most cases, MOFCOM only requires the recipient

company to issue its own end-use certificate unless it is importing a very sensitive item or technology. Once an export license is obtained, the exporter must present the license to Customs before export. Under China's catch-all provisions, if an exporter knows that there is a risk of proliferation, the exporter is required to apply for a license regardless of whether the item is controlled. Although U.S. experts have urged MOFCOM to establish procedures to conduct post-shipment verifications to prevent diversions to unauthorized end-users, Wang told us that he believes China should not conduct these inspections because this would violate the sovereignty of other countries.

17. (C) In addition to reviewing export licenses, MOFCOM reviews applications by firms seeking permission to export controlled items and technology. Only MOFCOM-approved firms may trade in these items. MOFCOM also organizes export control training programs for industry and other government agencies at the national and provincial levels. Embassies have observed several of these programs.

MFA Role in Export Controls

18. (C) The Ministry of Foreign Affairs examines license applications if there are foreign policy concerns over the export of certain products. In reviewing a license application, MFA officials state that they take into consideration a variety of factors, including national security, China's international obligations and commitments, global and regional stability, proliferation risks and whether the destination country is subject to UN sanctions or is a state sponsor of terrorism. Chinese officials, however, share little information with us on how these issues are prioritized, debated and decided.

19. (C) MFA officials have told us that they chair an inter-agency task force that disseminates to relevant Chinese ministries information from foreign embassies in Beijing on

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exports of concern. The MFA is also the first and oftentimes only Ministry to receive criticism from the international community when China fails to satisfy its international nonproliferation obligations and understands fully the consequences when China fails to do so. Accordingly, when the MFA believes that China's interests are at stake, the Ministry can be particularly influential at urging other PRC agencies to take action to implement and enforce China's export control laws and regulations.

110. (C) Several officials working in the MFA's approximately 30-person Arms Control and Disarmament Department have spent large parts of their careers handling nonproliferation matters, although many officers transfer to other MFA departments after spending a few years in one of the Arms Control and Disarmament Department's four divisions. These divisions include the Nuclear Division, which is responsible for handling issues related to the International Atomic Energy Agency and the Iran nuclear issue, the Missiles and Conventional Weapons Division, the Chemical and Biological Weapons Division and the General Policy Division. The Missile and Conventional Weapons Division is a frequent recipient of U.S. information on cases of concern and thus plays a leading role in shaping PRC nonproliferation policy towards the United States. The MFA International Organization Department has the lead on UNSCR 1718 implementation. MFA officials also participate in training programs and outreach seminars on export controls.

NDRC's Role in Export Controls

111. (C) The National Development and Reform Commission's Chemical Weapons Convention Implementation Office (CWCIO) is responsible for reviewing CWC-listed chemical export

licenses. CWCIO officials participate in seminars and assist MOFCOM to increase awareness of export controls, although the large size of China's chemical industry makes industry outreach a challenge. The NDRC's main drawback is that most of the Commission's attention remains focused on how to keep China's economy humming. However, we believe that NDRC officials may play an important role formulating China's overall export control policy. A senior NDRC official appeared well-briefed on U.S. export controls during a meeting in May with visiting U.S. Commerce Under Secretary David McCormick (Ref F), and an NDRC official played a vocal role, speaking at length on U.S. export controls, during a recent United States-China High Technology and Strategic Trade Working Group meeting in Washington. A Chinese official told Emboff that China's response to the proposed U.S. rule on exports to China was a compromise document drafted by the NDRC. This official also said that the NDRC researches other countries export control systems to learn best practices.

COSTIND's Conflicting Role

¶12. (C) The Commission of Science, Technology and Industry for National Defense (COSTIND) has direct approval authority of conventional munitions exports, including missiles. COSTIND consults on an ad hoc basis with other government agencies, including MOFCOM and the MFA, and has a bureau that issues licenses. COSTIND's China Atomic Energy Agency examines nuclear material and equipment exports, although MOFCOM actually issues the license, and approves entities permitted to export nuclear items. In November, the State Council announced that it had approved revisions to China's nuclear-related export controls (Ref A). According to an article published by the Chinese news service Xinhua, a COSTIND Deputy Director, at an August conference for COSTIND employees, announced the organization's plans to establish a nuclear exporters "qualification scrutiny system" for nuclear safeguards supervision, adding that China will "spare no efforts" to fulfill its nuclear nonproliferation obligations. Despite repeated efforts, COSTIND has been unwilling to share with us details on these plans. In December, a COSTIND official speculated that the Deputy Director might have been referring to PRC plans to review the criteria China employs to select firms permitted to engage in the nuclear export

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trade.

¶13. (C) One of the primary problems with COSTIND's involvement in the export control process is that it is also responsible for promoting the interests of China's defense industry sector, including directly overseeing the operations of several State Owned Enterprises (SOEs). A Chinese nonproliferation expert told us that COSTIND receives a percentage of export sales by SOEs that are authorized to make military equipment sales. If true, this could play a role in COSTIND's willingness to effectively police these SOEs, some of which are currently subject to U.S. sanctions.

PLA's General Armaments Department

¶14. (C) According to China's 2005 White Paper on Nonproliferation, the Central Military Commission has the authority to review export cases that might have a "significant impact" on national security and the public interest. A Chinese expert at the China Arms Control and Disarmament Association told us that COSTIND approves conventional arms and missile munitions exports with the "blessing" of the PLA's General Armaments Department (GAD). This expert said that he believes GAD should consider re-exerting influence over COSTIND and arms exports in order to more effectively enforce export controls. (Note: At the Ninth National People's Congress in 1998, major portions of COSTIND were civilianized and separated from the Central

Military Commission. End Note.) The expert claimed that with proper training GAD can play a constructive role in the administration of export controls similar to the role played by the Pentagon.

Custom's Role in Export Controls

¶15. (C) The General Administration of China Customs plays a critical role in the enforcement of China's export control laws and regulations. To assist its officers to identify products requiring export licenses, the agency is developing a catalogue for all items on China's control lists based on the commodities' Harmonized Code and is exploring ways to code commodities in the areas of biotech and intangible technology. According to a MOFCOM official, the catalogue is 70 percent complete. China Customs checks exports against a MOFCOM license list before clearance for export. If Customs is unable to make a determination of the nature or applicability of export controls to a given shipment, it can require that the exporter secure a license or documentation that no license is required from MOFCOM.

¶16. (C) China Customs has the legal authority to search, seize and detain exports and Customs regulations require transshipments and through-shipments to be declared to Customs. However, Custom's jurisdiction is limited to those areas over which it has surveillance responsibility, such as ports. Customs officials have told us they are permitted to open sealed containers for inspection only after supporting documentation is filed with Customs, but not before.

¶17. (C) Customs has deployed technological aids to some of the country's 550 customs stations, including container scanners and equipment to detect nuclear, chemical and biological items. However, most of this equipment is located at the country's largest ports (see Ref B for a description of Customs operations at a Shanghai container port). A senior Customs official told us that China is taking steps to expand the use of detection equipment at its ports, although Customs has yet to share detailed information on what equipment is being employed at sensitive border stations, like Dandong on the PRC-DPRK border. Customs officials have stated they are confident they can detect possible North Korean shipments of radiological materials through PRC land, air and sea ports, but acknowledge that China faces a geographic challenge.

¶18. (C) To improve its export control capabilities, Customs provides export control and nonproliferation training to its officers, although corruption remains a serious weakness,

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particularly at the local level. Most Chinese and foreign experts acknowledge that it will take years before Customs is fully effective in preventing proliferation.

Enforcement -- the Weak Link

¶19. (C) China's enforcement of its export control laws is opaque and is considered by foreign experts and a number of Chinese experts as the weakest link in the PRC's export control system. MOFCOM has the authority to investigate unlicensed exports of controlled items and can levy penalties. If MOFCOM uncovers criminal intent, it forwards the case to the Ministry of Public Security (MPS) for further investigation. A Chinese nonproliferation expert told us that MPS responds to foreign information on pending illegal exports, but lacks an effective independent investigatory capability. The Ministry of State Security (MSS) also plays an investigatory role, although PRC officials reveal little about this organization's responsibilities and capabilities. MFA officials routinely claim that "relevant authorities" closely monitor suspect firms in China, but the MFA does not proactively share information on these investigations,

claiming it would reveal Chinese "sources and methods." A MOFCOM official told us that the MSS has the authority to seize from any PRC agency the jurisdiction to investigate export control violations.

¶20. (C) To resolve enforcement jurisdictional disputes, China has institutionalized interagency coordination and established a rapid-reaction task force mechanism. MOFCOM, MFA, Customs, COSTIND, NDRC, Ministry of National Defense, MPS, MSS and other ministries are believed to be members of the task force. However, the PRC inter-agency process remains opaque. Chinese officials have referred to the task force in conversations with us, but share little details on its operation. When needed, the MFA tells us it has sent its own staff to coordinate investigations on the ground. A Chinese expert claimed that inter-agency coordination has begun to improve, although another Chinese expert told us that effective coordination is still lacking. Foreign experts have urged China to improve inter-agency information sharing on illicit exports and to take steps to enhance its investigatory capabilities.

¶21. (C) China has only publicly fined two companies that have violated export control laws. Although government officials claim that the PRC has prosecuted "scores of cases" under its laws, Beijing has not shared any detailed information confirming that this is the case. A MOFCOM official claimed that China does not share information or publicly punish Chinese companies out of fear that the United States will sanction these firms. According to a Chinese nonproliferation expert, the PRC does not publish or share information on export control violations because a "culture of secrecy" still pervades Chinese ministries. Other Chinese experts claim that PRC enforcement agencies are unable to punish some Chinese firms because of the close, personal connections between company officials and senior Chinese leaders and because Chinese culture eschews public humiliation (Ref C and D).

Going Public

¶22. (C) Although the PRC has made its laws and regulations publicly available by posting them on the Internet and conducting export control-related training programs and seminars, U.S. and Chinese experts believe that China needs to do more to expand these programs, for example, to reach small and medium-sized firms in remote areas and to take active steps to encourage firms to implement effective internal compliance programs. Nongovernmental organizations, universities, research institutes and industry associations are organizing export control training and outreach programs for government and business officials, though the effectiveness and impact of these efforts is unclear. At least one Chinese expert has expressed skepticism that these seminars are resulting in actual changed behavior in Chinese firms. Chinese firms must export to survive, the expert

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stated, and may view export control laws and regulations as an impediment to profitability (Ref C).

¶23. (C) Sourcing Note: Information for this cable was derived from our conversations with Chinese government officials and with Chinese experts at the China Academy of Social Sciences, the China Arms Control and Disarmament Association, Beijing University and the China Institute of Contemporary International Relations. We also relied on presentations by Chinese experts and Chinese officials from the MFA, MOFCOM and Customs at seminars and conferences. Information from China's 2005 White Paper on Nonproliferation, a 2005 Rand report on China's export controls ("Chasing the Dragon" by Evan Medeiros), a 2005 University of Georgia report on China's export controls and a study by the Monterrey Institute's Center for Nonproliferation Studies ("Strengthening China's Export Control System" by Yuan

Jingdong) also proved useful, as did articles appearing in Arms Control Today (November 2005), Jane's Intelligence Review (April 2005) and The Nonproliferation Review (Fall/Winter 2002). End Note.
SEDNEY